



FTB/CPA Liaison Meeting: Tax Shelters Update

October 27, 2005

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California Franchise Tax Board**

California Tax Shelter Audits

- Taxpayers: Individuals, Pass Through Entities, Corporations, Trusts
- Cases: < 900 Taxpayers
- Estimated Tax & Penalty: \$1 Billion
- Closed Cases: >1,200 taxpayers, > \$1 billion tax and >\$11 million penalties

Other CA Activities

- ATSU Activities
- Promoter Audits
- Review of Disclosure and Registration Statements
- Off shore Transaction Group
- VCI - \$700 million may be nonrefundable
- Chief Counsel Penalty Waivers

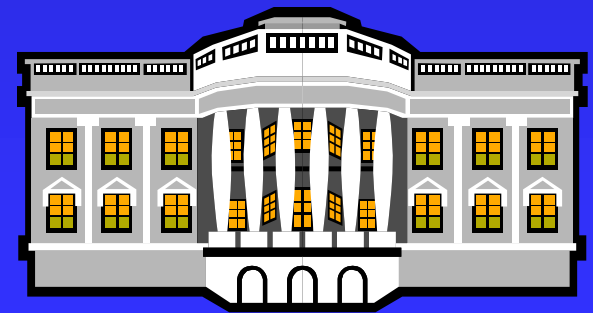
FTB Cases

- Board of Equalization Appeal – James A. and Lisa E. Alyn, No. 258065
- Litigation Case – City National Bank, L.A. Superior Court, No. BC334772



New CA Legislation

- AB 115 signed by the governor 10/7/05
- Effective immediately and operative 1/1/05
- Repealed tax shelter registration
- Adopted federal material advisor disclosure
- Other changes



Material Advisor Disclosure

- Follows federal law (IRC §6111)
- Disclosure of Reportable Transactions
- Penalty: Same as federal: \$50,000 or, if listed, greater of \$200,000 or 50% (75% if intentional failure) of gross income from activity
- CA connection
- CA provides special rules for listed transactions
- Due dates for 2005

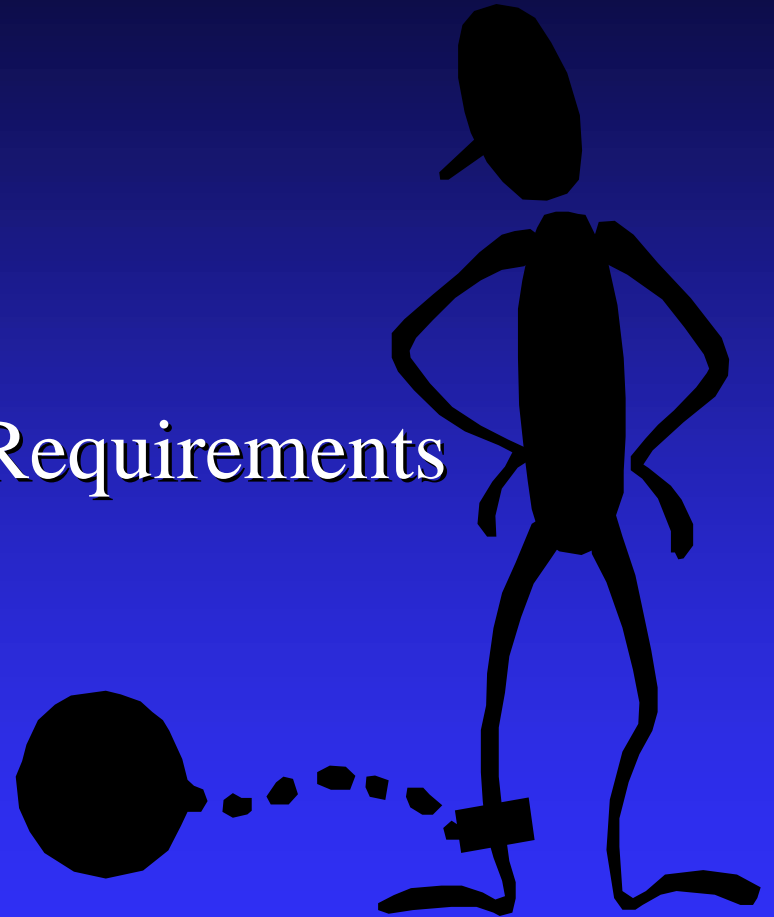


Reportable Transactions

- Listed Transactions
- Confidential Transactions
- Transactions with Contractual Protections (contingency fees)
- Loss Transactions
- Transactions with Significant Book-Tax Differences
- Transactions with Brief Asset Holding Period

Federal Activities

- Cases
- Circular 230 Practice Requirements
- Recent Indictments



Ethical Questions

- Do I take a position when the tax code allows it or when there is nothing in the code to prevent it?
- Should Congressional intent be taken into consideration?
- Does ethical merely mean it's legal or that it passes a risk/reward analysis?
- When does good taxpayer representation become tax evasion, conspiracy or obstruction of justice?

Tax Shelter Example



- Donate my 1985 Toyota Corolla to charity. Tax Shelter?
- Abusive?
- Intended by Congress
- Charity is my personal private foundation to benefit my son
- What if side agreement to get my car back 3 days later?
- What is valuation said it was worth \$50,000?

The Real Facts

- Tax Return Penalty of Perjury Statement: true, correct and complete – evasion or conspiracy?
- Disclosure – how much is enough?
- Don't ask don't tell? Duty to provide all the facts?
- Controversy Stage – valid privilege or obstruction of justice?

Questions and Discussion:

What else can or should be done to prevent these types of behavior?